

Remarks:

Applicant has carefully studied the non-final Examiner's Action mailed 08/06/2004, having a shortened statutory period for response that expired 11/06/2004, and having an extended statutory period for response set to expire 12/06/2004, and all references cited therein. The amendment appearing above and these explanatory remarks are believed to be fully responsive to the Action. Accordingly, this important patent application is now believed to be in condition for allowance.

Applicant responds to the outstanding Action by centered headings that correspond to the centered headings employed by the Office, to ensure full response on the merits to each finding of the Office.

Specification

The specification stands objected to because some of the structural limitations recited in the summary of the invention are not recited in the detailed description of the invention. This ground of rejection is met in part by changing "means" to --screws-- in the penultimate line of paragraph [0030] of the summary and by inserting --extensible and retractable-- prior to "screws" in line 1 of paragraph [0073] of the detailed description. Changing "means" to --screws-- brings said paragraph [0030] of the summary into conformity with paragraph [0073] of the detailed description and inserting --extensible and retractable-- brings paragraph [0073] into conformity with paragraph [0030].

This ground of rejection is further met by adding the substance of paragraphs [0034] and [0035] of the summary to paragraph [0063] of the detailed description.

Claim Rejections – 35 U.S.C. § 102

Applicant acknowledges the quotation of 35 U.S.C. § 102(b).

Claims 1-2 and 20-21 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Blechman. Reconsideration and withdrawal of this ground of rejection is requested because the magnets in Blechman do not serve to hold the wearer's mouth closed (as when magnets of opposite polarity are opposed to one another) or to make mastication difficult (as when magnets of the same polarity are opposed to one another). Instead, as disclosed by Blechman at column 2, lines 67-71:

...the magnetic elements 42 and 44 as described in connection with
FIGURES 1 and 2, will produce through magnetic attraction a

horizontal posterior force on the teeth of the upper jaw tending to correctively displace the upper teeth relative to the lower teeth."

Blechman therefore does not disclose a first magnet associated with maxillary dentitions and a second magnet associated with mandibular dentitions where the upper and lower jaw are strongly attracted to one another to inhibit ingestion or where said jaws are magnetically repelled from one another to inhibit mastication. Such use of magnetic means is clearly original to Applicant and Applicant is entitled to the *quid pro quo* promised to those who advance the useful arts.

More particularly, Blechman teaches a magnet arrangement that produces a horizontal force on the teeth of upper jaw, urging said upper teeth in a posterior direction. Such teaching clearly teaches away from Applicant's teaching as claimed with precision. Nor does Blechman include a suggestion concerning the screws claimed by Applicant to prevent the user from removing the novel apparatus.

Claim Rejections – 35 USC § 103

Applicant acknowledges the quotation of 35 U.S.C. § 103(a).

Claim 11 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Blechman in view of Clark; reconsideration and withdrawal of this ground of rejection is requested because claim 11 is dependent from claim 1, currently amended, and thus is allowable as a matter of law upon the allowance of said claim 1. It is noted for the record that the Clark assembly of parts includes no magnetic means and, accordingly, no frame for holding said magnetic means. It follows that the laser welding of a post to a "segment" as taught by Clark would not have suggested laser welding of a magnetic means to a frame in the context of Applicant's invention.

Claims 12-15 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Blechman in view of Dworkin; reconsideration and withdrawal of this ground of rejection is requested because claims 12-15 are ultimately dependent from claim 1, currently amended, and thus are allowable as a matter of law upon the allowance of said claim 1.

Claims 11, 12-15 are not suggested by any prior art reference even when combined with Blechman because Blechman's teachings relate to using magnetic force to displace teeth in a posterior direction and not to urge teeth toward or away from one another as taught only by Applicant.

Allowable Subject Matter

Claims 3-10, 16-19, and 22-32 are indicated as being in condition for allowance if rewritten in independent form to include all of the limitations of the base claim and any intervening claims. However, incorporating the subject matter of claim 3 into claim 1 would unduly limit the invention, as would the separate incorporation of the subject matter of claim 16 into claim 1 and the separate incorporation of the subject matter of claim 22 into claim 1.

Claim 33 stands allowed. Claim 33 is renumbered as claim 34 because independent claim 26 was not numbered when the electronic application was filed. Note that two (2) claims are numbered as claim [c25] in said application.

New claims 35 and 36 recite Applicant's contribution in clear and concise terms and such claims are allowable over all references of record.

Conclusion

Applicant agrees that the art made of record and not relied upon is not more pertinent to the claimed invention than the art cited.


If the Office is not fully persuaded as to the merits of Applicant's position, or if an Examiner's Amendment would place the pending claims in condition for allowance, a telephone call to the undersigned at (727) 507-8558 is requested. Applicant thanks the Office for its careful examination of this important patent application.

Very respectfully,

SMITH & HOPEN

Dated: November 29, 2004

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CERTIFICATE OF FACSIMILE TRANSMISSION

(37 C.F.R. 1.8(a))

I HEREBY CERTIFY that this Amendment A, including Introductory Comments, Amendments to the Specification, Amendments to the Claims, and Remarks, is being transmitted by facsimile to the United States Patent and Trademark Office, Art Unit 3764, Attn: Mr. Michael A. Brown, (703) 872-9302, on November 29, 2004.

Dated: November 29, 2004


Deborah Preza